

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FLENOID GREER,

Petitioner,

v.

CASE NO. 2:07-CV-10873
HONORABLE LAWRENCE P. ZATKOFF

MARY BERGHUIS,

Respondent.

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OPINION AND ORDER

On November 26, 2007, Petitioner filed: (1) a Motion for Certificate of Appealability (Docket #16), and (2) an Application to Proceed In Forma Pauperis (Docket #19), both in conjunction with the Notice of Appeal he filed that day. The Court, however, has already addressed the subject of both of Petitioner's requests. On October 12, 2007, the Court issued an Opinion and Order granting Respondent's Motion for Summary Judgment and entered a Judgment dismissing Petitioner's cause of action, with prejudice. In that Opinion and Order, the Court stated:

Before Petitioner may appeal this Court's dispositive decision, a certificate of appealability must issue. *See* 28 U.S.C. § 2253(c)(1)(a); Fed. R. App. P. 22(b). A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When a federal district court denies a habeas claim on procedural grounds without addressing the claim's merits, a certificate of appealability should issue, and an appeal of the district court's order may be taken, if the petitioner shows that jurists of reason would find it debatable whether the petitioner states a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. *See Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). When a plain

procedural bar is present and the district court is correct to invoke it to dispose of the matter, a reasonable jurist could not conclude either that the district court erred in dismissing the petition or that the petitioner should be allowed to proceed. In such a case, no appeal is warranted. *Id.*

After conducting the required inquiry and for the reasons stated herein, the Court is satisfied that jurists of reason would not find the Court's procedural ruling debatable. Accordingly, the Court **DENIES** a certificate of appealability in this case. The Court also **DENIES** Petitioner leave to proceed *in forma pauperis* on appeal because any appeal would be frivolous. *See* Fed. R. App. P. 24(a).

As the Court previously addressed the issues raised in Petitioner's current filings, the Court shall treat Petitioner's Motion for Certificate of Appealability and Application to Proceed In Forma Pauperis as motions for reconsideration. Motions for reconsideration may be granted only if Petitioner (a) demonstrates a palpable defect by which the Court and the parties have been misled; and (2) demonstrates that "correcting the defect will result in a different disposition of the case." United States District Court, Eastern District of Michigan Local Rule 7.1(g). *See also Graham ex rel. Estate of Graham v. County of Washtenaw*, 358 F.3d 377, 385 (6th Cir. 2004); *Aetna Cas. and Sur. Co. v Dow Chemical Co.*, 44 F.Supp.2d 865, 866 (E.D. Mich. 1999); *Kirkpatrick v. General Electric*, 969 F.Supp. 457, 459 (E.D. Mich. 1997). In addition, applicable law requires that a motion for reconsideration must be filed within 10 days after entry of the judgment or order. *See* E.D. Mich. L.R. 7.1(g)(1).

In this case, Petitioner failed to file his "motions for reconsideration" within 10 days of the date of entry of the Opinion and Order. Instead, Plaintiff filed his motions more than 30 days after the deadline. More importantly, Petitioner's motions do not "demonstrate a palpable defect by which the Court and the parties have been misled." Rather, Petitioner generally reiterates the arguments set forth in his petition for writ of habeas corpus, all of which were considered by the

Court in rendering the Opinion and Order. Petitioner's "arguments" therefore are not sufficient to demonstrate that the Court has been misled or that there was a palpable defect in the Opinion and Order.

Accordingly, and for the reasons set forth above, Petitioner's Motion for Certificate of Appealability and Application to Proceed In Forma Pauperis are DENIED.

IT IS SO ORDERED.

s/Lawrence P. Zatkoff
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

Dated: December 3, 2007

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on December 3, 2007.

s/Marie E. Verlinde
Case Manager
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